

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

JAMES DISCHER,

Case No.

Plaintiff,

IN ADMIRALTY

VS.

MICHAEL MALLOY, IN PERSONAM; THE
F/V YUKON, OFFICIAL NUMBER 932570,
HER ENGINES, MACHINERY,
APPURTEANCES AND CARGO, IN REM

**SEAMAN'S COMPLAINT IN REM AND
IN PERSONAM FOR WAGES,
PENALTIES AND PUNITIVE DAMAGES
— ALL WITHOUT PAYMENT OF COSTS,
28 U.S.C. § 1916**

Defendants.

COMES NOW the plaintiff and complains of the defendants alleging upon information and belief as follows:

1. Plaintiff, James Discher, brings and maintains this action pursuant to 28 U.S.C. § 1333; U.S. Const. Art. III, sec. 2, and the general maritime law.

2. Plaintiff and the in personam defendant are both residents of the Western District of Washington.

3. Plaintiff is a seaman and a ward of this Court and elects to take advantage of the provisions of 28 U.S.C. § 1916 to proceed without prepayment of costs or fees.

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1 4. Defendant herein, Michael Malloy, is an individual or other form of business
2 entity with a principal place of business or doing business in the Western District of Washington.

3 5. The F/V Yukon is a 32-foot vessel of 24-gross tons, documented by the United
4 States, official number 932570. Said vessel has her home port in the Western District of
5 Washington or will be found in the Western District of Washington during the pendency of this
6 action. During all times herein mentioned said vessel was owned or bareboat chartered by the
7 defendants and was engaged in maritime commerce.

8 6. At all times herein mentioned, plaintiff was employed by the defendants as a
9 member of the crew, in the service of said vessel and was at all times acting within the course
10 and scope of his duties as deckhand in furtherance of the mission of said vessel.

11 7. Plaintiff was employed by the defendants to work the 2018 Bristol Bay Alaska
12 Salmon season, from June 12 to August 2, 2018, at a crew share of ten percent.

13 8. At the conclusion of the season, before the fish were paid for by the cannery,
14 plaintiff was destitute, living in his car, and without funds. He requested an advance on his
15 wages from defendant Michael Malloy. Defendant Malloy offered to pay plaintiff \$3,000 on the
16 condition that he waive rights to any additional payment of his crewshare. Plaintiff agreed,
17 under duress and without full understanding of the rights he was giving up and accepted \$3,000
18 from Malloy.

19 9. Plaintiff was shorted an additional crew share in the amount of \$3,485, plus a
20 refrigerated seawater (RSW) bonus and retroactive price adjustment. The amount of \$1,460 was
21 also deducted from his settlement for airfare, based upon ambiguous language in the contract of
22 employment.

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10. The agreement forced on the plaintiff by defendant Malloy constitutes usury and is an invalid release of the seaman's right to wages. Any agreement depriving a seaman of full wages is *pro tanto* void.

11. The balance of plaintiff's wages has been demanded and denied. Plaintiff claims wage penalties under state law and/or punitive damages under the federal maritime law.

WHEREFORE, plaintiff prays judgment against the defendants as follows:

1. For a declaration that the plaintiff holds claim to a preferred maritime lien against the defendant vessel, her engines, machinery, appurtenances and cargo;

2. For arrest, condemnation and sale of the defendant vessel including her engines, machinery, appurtenances and cargo;

3. For wages and wage penalties or, in the alternative, for punitive damages;

4. For pre-judgment interest on all claims as is in the law provided;

5. For such other and further relief, including attorney fees, as is met and just in the circumstances.

Dated this 3rd day of December, 2018.

LAW OFFICE OF JOHN MERRIAM

By: /s/ John W. Merriam
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1 I am the attorney for the plaintiff in this action and have knowledge of the matters
2 asserted in the above complaint based upon information provided by the plaintiff.

3 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the allegations of the
4 above complaint are true and correct to the best of my knowledge and belief.

5 DATED at Seattle, Washington this 3rd day of December, 2018.

6 */s/ John W. Merriam*
7 John W. Merriam

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